

OFFICE OF THE STATE PUBLIC DEFENDER



REPORT ON IOWA'S INDIGENT DEFENSE SYSTEM

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INTRODUCTION

Iowa's indigent defense system continues to be strong. The approximately 223 employees of the State Public Defender (SPD) System efficiently provide high quality representation. In FY 2017, SPD offices closed cases involving more than 83,000 charges. There was a final finding of ineffective assistance of counsel in less than .001% of these charges.

Similarly, more than 810 contract attorneys continue to provide high quality representation throughout all 99 of Iowa's counties. In Fiscal Year 2017, 76,737 claims were submitted to the indigent defense fund, at an average cost per claim of \$449.85.

This report pursuant to Iowa Code § 13B.2A provides the State Public Defender's recommendations related to the hourly rates paid to court-appointed counsel, the per case fee limitations, and other indigent defense matters.

It does not recommend changes in the statutory rates for court-appointed counsel or adjustments to the per case fee limitations at this time.

BACKGROUND

This report is submitted pursuant to Iowa Code § 13B.2A, which provides:

1. The state public defender shall file a written report every three years with the governor and the general assembly by January 1 of a year in which a report is due relating to the recommendations and activities of the state public defender relating to the state indigent defense system. The first such report shall be due on January 1, 2012.
2. The report shall contain recommendations to the general assembly regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

Prior to the enactment of the current version of the statute, the now-disbanded Indigent Defense Advisory Commission was required to issue a report every three years making "recommendations to the legislature and state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations." Iowa Code § 13B.2A (2009). The commission issued four such reports, on December 9, 2002, December 15, 2003, December 6, 2006, and November 30, 2007.

HOURLY RATES PAID TO COURT-APPOINTED COUNSEL

Hourly rates for fees to court-appointed counsel for indigents in criminal prosecutions, juvenile court cases, and other authorized proceedings are set by Iowa Code § 815.7. Although the State Public Defender has authority to contract with providers at rates different than the statutory rate, *see* Iowa Code §§ 13B.4(3), 815.7(1), historically the State Public Defender contracts with attorneys at the statutory rates except for a few special circumstances.¹

For appointments made on or after July 1, 2007, the statutory rates are \$70 per hour for Class A felonies, \$65 per hour for Class B felonies, and \$60 per hour for all other cases. For appointments between July 1, 2006, and June 30, 2007, the rates were \$65 per hour for Class A felonies, \$60 per hour for Class B felonies, and \$55 per hour for all other cases. For appointments between July 1, 1999, and June 30, 2006, the rates were \$60 per hour for Class A felonies, \$55 for Class B felonies, and \$50 per hour for all other cases.

At this time, the State Public Defender does not recommend a change to the statutory rates. Generally, there does not appear to be a problem finding counsel willing to be appointed to handle the available cases. It is important to continue to evaluate this issue.

There is minimal to no change with the number of contract attorneys as provided in the 2014 Report². There are approximately 810 attorneys with active contracts to represent indigent persons in Iowa courts, covering all 99 counties. Prior to the 2014 Report, the number of contract attorneys decreased due, in large part, to changes in the qualifications requirements for contracting. There have been no major changes in the number of contract attorneys since the decrease due to the qualifications requirements.

In response to the qualifications requirements, the State Public Defender provides free Continuing Legal Education (CLE) trainings³ and implemented the Second Chair Program. In 2014, our agency provided 56.75 hours of free training. In 2015, our agency provided 65 hour of free training. In 2016, our office provided 63 hours of free training. In 2017, our office provided 75.25 hours of free training. Our office has also fully implemented the Second Chair Program, allowing attorneys to assist an experienced attorney while receiving trial credit at no cost to the client or taxpayer.

¹ Currently, the State Public Defender contracts with several nonprofit organizations at alternative rates, including the Drake Legal Clinic, Youth Law Center, and Linn County Advocate. The State Public Defender also contracts with individual attorneys in certain counties to handle specialized representation, such as drug court programs.

² Report on Iowa's Indigent Defense System (December 23, 2014). Available at: <https://spd.iowa.gov/sites/default/files/2015%20Legislative%20Report.pdf>

³ A list of State Public Defender Trainings may be found on our website at: <https://spd.iowa.gov/defense-resources/training-opportunities>.

It also remains vitally important to ensure that the indigent defense fund, from which the court-appointed attorney fees are paid, is appropriately funded for the estimated expenditures each fiscal year. For many attorneys, their indigent defense work is a sizable portion of their practice and delays in payment causes significant hardship. In order to minimize any delay in payment, the State Public Defender's Office implemented mandatory online claims for attorneys in January of 2017. In 2014, the State Public Defender processed claims on an average of 35.3 days. In 2015, the State Public Defender processed claims on an average of 28 days. In 2017, the State Public Defender processed claims on an average of 16.8 days. In three years, the Public Defender's Office reduced the processing claims time in half. This benefits the contract attorneys by compensating them for their work in a timely manner.

ADMINISTRATIVE RULE CHANGE

In the past all adult fee claims had to be submitted for payment within 45 days of the date of service as defined in Iowa Admin. Code § 493-12.2(3). For most claims the date of service was the file stamped date on the dispositional order. The Iowa Supreme Court changed Iowa R. Crim. P. 2.30(1) Duty of continuing representation; withdrawal to read that in the event of the entry of a judgement of conviction and sentence, an attorney may not withdraw ... until the expiration of the time for appeal from the judgment of conviction if no notice of appeal is file. In response to the Iowa Supreme Court rule change, the State Public Defender's Office was urged to extend the time for submission of claims involving convictions for an additional 30 days or until the expiration of the appeal period from a conviction. Consequently, the date of service for charges involving adult convictions (plea and sentencing, verdict and sentencing) has changed. The date of service, for charges ending in conviction, is now the date of expiration of the time for appeal from a judgment of conviction. *See* Iowa Admin. Code § 493-12.2(3)(a).

PER CASE FEE LIMITATIONS

The State Public Defender is required by Iowa Code § 13B.4(4)(a) to “establish fee limitations for particular categories of cases.” Accordingly, the State Public Defender has adopted administrative rules establishing attorney fee limitations for adult cases, juvenile cases, and appellate cases. *See* Iowa Admin. Code § 493.12.6. A claim by an attorney in excess of the attorney fee limitations established by the State Public Defender will not be paid unless the attorney seeks and obtains prior authorization from the appointing court to exceed the attorney fee limitations. *See* Iowa Code § 815.10A(3); Iowa Admin. Code § 493-12.6(4). Such motions are routinely granted, often at the beginning of a case without any further limitation on fees.

The State Public Defender does not make any further recommendations to the General Assembly regarding the fee limitations at this time. The current limits appear appropriate in light of the fee rates and the number of hours typically spent on a particular type of case, and the State Public

Defender will continue to evaluate the appropriateness of the limitations and will exercise the current statutory authority to adjust the limitations through revisions to the administrative rules if necessary. No further legislative action is necessary at this time. The current fee limitations established by the State Public Defender are set forth in the charts below:

Adult Cases

Type of Case	Fee Limitation
Class A Felonies	\$18,000
Class B Felonies	\$3,600
Class C Felonies	\$1,800
Class D Felonies	\$1,200
Aggravated Misdemeanors	\$1,200
Serious Misdemeanors	\$600
Simple Misdemeanors	\$300
Simple Misdemeanor appeals to district court	\$300
Contempt/Show Cause Proceedings	\$300
Chapter 229A Proceedings (civil commitments of sexually violent predators)	\$10,000
Probation Violation	\$300
Parole Violation	\$300
Extradition	\$300
Post-conviction relief	\$1,000 or ½ of the fee limitation for the conviction from which relief is sought

Juvenile Cases

Type of Case	Fee Limitation
Delinquency (through disposition)	\$1,200
Child in Need of Assistance (CINA) (through disposition)	\$1,200
Termination of parental rights (TPR) (through disposition)	\$1,800
Juvenile court review and other post-dispositional court hearings	\$300
Judicial bypass hearings	\$180
Juvenile commitment hearings	\$180
Juvenile petition on appeal	\$600
Motion for further review after petition on appeal	\$300

ADDITIONAL DEVELOPMENTS

“Crimmigration” training

On June 9, 2017, the Iowa Supreme Court issued a decision in *Roberto Morales Diaz v. State of Iowa* that clarified the scope of criminal defense counsel's duty to advise noncitizen clients of the immigration consequences of their guilty pleas and convictions. The Iowa Supreme Court's clarification comes after the U.S. Supreme Court's 2010 ruling in *Padilla v. Kentucky* that stated criminal defense attorneys must expand their knowledge to the area of immigration law in order to inform criminal defendants of immigration consequences as a result of their criminal conviction. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). Though the Iowa Supreme Court's decision set a higher bar than many previously assumed, our office is working to provide attorneys the resources to comply with the Court's ruling.⁴ Since June 2017, our office provided two webinars and two in-person trainings in Des Moines and Iowa City dedicated to crimmigration. Additionally, our office provides attorney resources to assist contract attorneys and public defenders with immigration questions.

Gideon Fellowships

House File 2132 established the Gideon Fellowship Program in 2014. The State Public Defender established the program to provide a new method of recruiting and hiring entry-level attorneys competitively with other legal employers. Each year, two Gideon Fellows are selected to serve a two-year term appointment in one of our public defender offices. Fellows will serve alongside career public defenders representing clients, trying cases, and participating in training and mentoring through the State Public Defender's New Attorney Development Program. Fellows are eligible to apply for permanent public defender positions during the term of their fellowship and it is hoped that successful fellows will continue their careers long-term in Iowa with the Office of the State Public Defender.

Currently, there are two Gideon Fellows. One is located at the Davenport Office and one is located at the Cedar Rapids Office. Our office will be interviewing for the Fall 2018 Fellows at the Sioux City Adult Office and the Waterloo Adult Office.

Electronic submission of claims

⁴ Immigrations resources may be found on our website at: <https://spd.iowa.gov/defense-resources/immigration>.

In January 2017, our office required attorneys to electronically submit their claims. Our office estimates rolling out online submission for miscellaneous claims (experts, court reporters, interpreters) on February 1, 2018. Online claims allows our office to reimburse attorneys and other parties conducting work on behalf of our office in a timely manner. Further, online submission of claims reduces fraud, abuse, and accidental billing. Our office continues to look for ways to find efficiencies through technology to better serve our stakeholders.

CONCLUSION

The Office of the State Public Defender will continue to strive towards its mission: to ensure that all indigent persons in Iowa are provided high-quality legal representation in criminal, juvenile, and other eligible proceedings in the most efficient and fiscally responsible manner. The State Public Defender will continue to look for opportunities to improve the quality of representation and achieve efficiencies so that the State of Iowa can use its limited resources for indigent defense in the most cost-effective manner.

The State Public Defender continues to find ways to better its services through technology. In 2018, the State Public Defender will make updates to its website to make it more user-friendly. The Public Defender will also develop plans to better its data and statistics in the way it tracks cases in the Public Defender Offices and in the Indigent Defense Fund and develop a plan to make its contracting process electronic.